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Paper

By: Merits Panel  
Interference Trial Section  
Board of Patent Appeals and Interferences  
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Filed: May 19, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge James T. Moore)

**FAXED**

STEPHEN P. TURNER

MAY 19 2004

Junior Party,  
(Patent 6,331,233)

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

v.

CHRISTOPHER A. MICHALUK  
LOUIS E. HUBER  
MARK N. KAWCHAK  
and  
JAMES D. MAGUIRE, JR.

Senior Party  
(Application 09/922,815)

Patent Interference No. 105,158 (JTM)

**JUDGMENT -- RULE 640**

Before McKELVEY, Senior Administrative Patent Judge, and TORCZON and MOORE,  
Administrative Patent Judges.

MOORE, Administrative Patent Judge.

### **A. Conference Call**

A telephone conference call was held on May 18, 2004 at approximately 1:00 p.m., involving:

1. James T. Moore, Administrative Patent Judge
2. John Kilyk Jr. Esq., counsel for Michaluk
3. Daniel S. Glueck, Esq., counsel for Turner

The principal purpose of the conference call was to discuss Turner's lack of filed preliminary motions or a preliminary statement at the end of time period 1.

Turner stated that the filing of no preliminary motions or preliminary statement was intentional.

Michaluk requested that the APJ issue an order to show cause why judgment should not be entered against Turner.

### **B. Discussion**

37 CFR § 1.601 provides that the interference rules shall be construed to "secure the just, speedy, and inexpensive determination of every interference." 37 CFR § 1.629(c)(1) provides that a party who does not file a preliminary statement shall be restricted to the party's effective filing date.

Turner is the junior party, accorded benefit of its application filing date of February 2, 2000 (Paper 1, page 3).

Michaluk is the senior party, accorded benefit of Application 09/199,569, filed November 25, 1998. (Paper 1, page 4).

Consequently, Turner cannot prevail in this interference and it shall be terminated expeditiously.

Michaluk has also filed a preliminary statement (Paper 27), and four preliminary motions (Papers 22, 23, 24 and 25).

### **C. Judgment**

It is hereby:

ORDERED that judgment on priority as to Count 1 (Paper 1, page 5), the only count in the interference, is awarded against junior party STEPHEN P. TURNER.

FURTHER ORDERED that junior party STEPHEN P. TURNER is not entitled to a patent containing claims 1-6 (corresponding to Count 1) of Patent 6,331,233.

FURTHER ORDERED that a copy of this paper shall be made of record in files of Patent 6,331,233 and application 09/922,815.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c), 37 CFR §§ 1.661 and 1.666.

FURTHER ORDERED that Michaluk's Preliminary Motions 1-4 are dismissed as moot.

FURTHER ORDERED that Michaluk's sealed, unopened preliminary statement be returned to Michaluk with the hard copy of this order (37 CFR § 1.631(c)).

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FRED E. McKELVEY  
Senior Administrative Patent Judge

*[Signature]*  
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RICHARD TORCZON  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

*[Signature]*  
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JAMES T. MOORE  
Administrative Patent Judge

May 19, 2004  
Arlington, VA

cc (via fax and US mail):

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